The facts of the *Employers Assurance Corporation Limited v. The Industrial Accident Commission* are an illustration of Chamberlayne's criticisms. Compensation was sought for the death of the decedent from blood poisoning following a bruise received in the course of his employment. The only evidence of the cause of the injury were statements made by the decedent to a fellow-employee, to his wife, to members of the family, and to several physicians and surgeons. The injury was slight, and in its early stages would apparently give the injured person no claim for compensation. There was nothing in the circumstances to cast suspicion on decedent's account of the cause of injury. It was the kind of statement on the truth of which in practical affairs men base their actions every day of their lives. No one questions the wisdom of the rule that where a witness is available he should give his testimony subject to cross-examination, but where a witness is dead, and where no other evidence can be obtained, justice is denied by excluding hearsay evidence where under the circumstances the court or tribunal is thoroughly satisfied of its truth. In the future on the facts of the particular case a different decision will be possible by reason of the amendment of 1915.[7] The amendment does not, however, cover hearsay on facts other than the cause of death. For example, where the only evidence of the nature of the employment is hearsay, no award can be made on that evidence alone. A broader amendment would not be inadvisable. In 1898 Massachusetts passed a statute which provided "no declaration of a deceased person shall be excluded as evidence on the ground of its being hearsay if it appears to the satisfaction of the judge to have been made in good faith before the beginning of the suit and upon the personal knowledge of the declarant."[8] Civilization has not come to an end since the enactment of that statute in Massachusetts, but much technical obstruction to the ascertainment of truth in judicial proceedings has been removed.

It should be observed that the principal cases do not decide that the Industrial Accident Commission cannot receive hearsay testimony, but merely hold that the writ of review, which is the only way the decision of the commission can be attacked, will result in the annulling of the decision of the commission whenever there is no evidence to support a necessary finding excepting hearsay.

*A. M. K.*

MARRIAGE: VALIDITY OF MARRIAGE OF MINORS.—The Civil Code of California establishes the age of consent with regard to marriage at eighteen years in the case of males and fifteen

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[7] 1915 Stat. Cal., ch. 607.

[8] 1898 Stat. Mass., ch. 535.

years in the case of females.[1] It further provides that no marriage license shall be issued if the male is below the age of twenty-one or the female is below the age of eighteen unless such minor shall first have obtained the consent of his or her parents.[2] Yet it was stated by way of dictum in the case of *In re Ambrose*[3] that a marriage between two parties, one of whom was a minor, though of the age of consent, was absolutely valid irrespective of the parents' consent. The material facts of that case were these: It was deemed best by the county probation officer that the two parties, the female being then fourteen years of age, be married to avoid the results of promiscuous sexual intercourse. The parents refused their consent, whereupon the officer petitioned to have a guardian appointed for the sole purpose of giving his consent to the marriage of the girl. This was granted, and the guardian appointed. From this decision of the trial court the parents appealed. In the meantime the girl had arrived at the age of fifteen and had been duly married. The decision on this appeal was that the marriage had emancipated the girl from the guardianship of both of her parents and of her appointed guardian, and therefore the cause of action had disappeared.

There is no doubt as to the correctness of this decision. But the following dictum may give rise to some surprise: "As the minor was over the age of fifteen years, she was capable of consenting to and consummating marriage, and, having been duly solemnized, it was valid whether it was consented to by her guardian or parents or not."

However, upon a review of the cases, this dictum seems in accord with the general rule that unless the statute expressly declares a marriage contracted without the necessary consent to be a nullity, it is to be construed as only directory in this respect, so that the marriage will be valid, and not void or voidable, although the disobedience to the statute may entail penalties on the licensing or officiating authorities.[4] It also follows the common law rule.[5] The decision is further supported by the presumption that as certain marriages are expressly made void by the code, all others are valid, and by section 82 of the Civil Code which provides that a marriage may be annulled if the party in whose behalf it is sought to have the marriage annulled, was under the age of legal

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[1] Cal. Civ. Code, § 56.

[2] Cal. Civ. Code, § 69.

[3] (May 11, 1915), 49 Cal. Dec. 660, 149 Pac. 43.

[4] 26 Cyc. 835; 2 Kent's Commentaries, 78; Damon's Case (1829), 6 Me. 148; Parton v. Hervey (1854), 1 Gray, 119; Fitzpatrick v. Fitzpatrick (1870), 6 Nev. 63; Governor v. Rector (1849), 29 Tenn. 57; Cunningham v. Cunningham (1910), 128 N. Y. Supp. 104.

[5] 1 Bl. Com. 436, 437.

consent, and such marriage was contracted without the consent of his or her parents.[6]

Marriage is a contract of the foremost importance, and though the state is concededly a party in interest, it is nevertheless deemed advisable not to disturb or set aside this contract because of a mere failure to observe all the formal requirements of the law. It seems to be well settled that at least the requirement of parental consent is not necessary to a valid marriage, though directed by the state law, unless that law expressly makes the marriage contract void because of the non-conformance.

*H. L. K.*

MINING LAW: INTEREST OF LOCATOR IN UNPATENTED MINING CLAIM: PASSES TO HEIRS BY DESCENT ON INTESTACY.—Does the interest of the locator of an unpatented mining claim who died intestate pass to his heirs by descent or can they only claim it as the beneficiaries designated by the United States? This was the sole question presented in the case of *Wallace v. Hudson.*[1] An attorney had represented to the plaintiff that she still possessed an interest in her deceased husband's unpatented mining claim and contracted to establish her title to it, which contract she sought to have cancelled. Previously the administrator of the estate had sold her said interest under probate sale in due course of administration. These probate sales conferred no title on the purchasers, it was contended, because an unpatented mining claim is a mere possessory interest in real property which does not pass to one's estate by descent but can only be claimed by the heirs as the donees or beneficiaries designated by the United States. The California Supreme Court held, however, basing its decision upon the authority of a former federal case,[2] that the possessory right of the locator of a mining claim is such an interest in real property as to pass upon his death to his heirs by descent. Such being the case it passed to the administrator for purposes of administration[3] and was subject to valid sale under order of the probate court.

The interest which the locator obtains in an unpatented mining claim differs from that which is acquired in the case of a pre-emption claim,[4] a donation claim[5] or a timber culture[6] entry. In these cases it has been held that the heirs do not take by descent from the deceased entryman. The congressional acts in each of these

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[6] People v. Souleotes (Jan. 13, 1915), 20 Cal. App. Dec. 79.

[1] (July 22, 1915), 50 Cal. Dec. 125.

[2] O'Connell v. Pinnacle Gold Mines Co. (1905), 140 Fed. 854.

[3] Cal. Code Civ. Proc. § 1581.

[4] Wittenbrock v. Wheadon (1900), 128 Cal. 150, 60 Pac. 664, 79 Am. St. Rep. 32.

[5] Hall v. Russell (1879), 101 U. S. 503, 25 L. Ed. 829; Hershberger v. Blewett (1892), 55 Fed. 170.

[6] Cooper v. Wilder (1896), 111 Cal. 191, 43 Pac. 591, 52 Am. St. Rep. 163.